IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 256 OF 2005

Kum. Gangubai Kashinath Salvekar ..Appellant

Vs.

Shri Shivajirao Harishchandra Shinde and ors. ..Respondents

Ms. Indrayani Koparkar with Mr. Nitin Deshpande for appellant.

Mr. Tanaji Mhatugade h/f Mr. A.V. Anturkar for Respondents.

CORAM: B.H. MARLAPALLE, J.

Date : June 21, 2005.

P.C.:

1. Heard the learned counsel for the appellant.

2. Civil Suit No.412 of 1996 filed in the Court of Small Causes Judge at Pune for possession of the suit premises comprising two rooms on second floor at CTS No.237. Shukrawar Peth, Pune came to be decreed vide judgment and order dated 12/8/1997 by the learned IVth Addl. Small Causes Judge, Pune and the said decision was carried in appeal, which came to be registered as Civil Appeal No.948 of 1997. It came to

be dismissed in default on or about 14/10/1999 and, therefore, an application for restoration came to be filed on or about 1/11/1999. It was registered as Civil Misc. Application No.693 of 1999 and it has been dismissed by the impugned order dated 23/3/2000 passed by the learned 6th Addl. District Judge, Pune.

3. It is noted from the record that this appeal was filed on 11/9/2001 along with an application for condonation of delay registered as C.A. No.1062 of 2001. Delay was condoned by this court vide order dated 28/1/2005 and thus the appeal came to be registered thereafter.

4. The Lower Appellate Court perused the Roznama of Civil Appeal No.948 of 1997 and found that the reasons stated in Civil Misc. Application No.693 of 1999 in support of the prayer for restoration of appeal were unbelievable and, therefore, false. It was noted from the Roznama that after the appeal was filed, the appellant as well as the advocate continuously remained absent and Lower Appellate Court, therefore, on 31/7/1998 passed an order

directing the appellant to file written arguments. The court waited for about six months but no written arguments were filed and, therefore, on 13/1/1999 the following order was passed :-

> "Advocates of both parties are absent. No written arguments are filed. No oral submissions advanced. Hence keep the matter for dismissal order on 22.2.99 if on that date the appellant fails to file written arguments."

5. On 22/2/1999 none appeared and the Presiding Officer was transferred. The new Judge took charge sometimes in August 1999 and on 10/8/1999 when the date was fixed, none was present for the appellant and so was the case on 10/9/1999. To give one more chance the appeal was adjourned to 14/10/1999 on which date again none remained present. It was under these circumstances that the appeal was dismissed in default and the reasons made out in the restoration application were disbelieved. The absence of the appellant or advocate on 14/10/1999 was not in isolation and the absence was right from the day the

appeal was filed. Thus the appellant was a careless litigant who was trying to avoid the decree passed against the appellant on 12/8/1997. She claimed that she was a cancer patient and was advised bed rest for two weeks from 12/10/1999. The Lower Appellate Court found that the medical certificate could not be relied upon. If the learned Advocate appearing for the appellant could not remain present on 14/10/1999 on account of the demise of her cousin brother, one fails to know why restoration application was filed on 1/11/1999 and more so when it is admitted in the application itself that the learned Advocate came to know of the order passed on 14/10/1999 on 20/10/1999 itself.

6. The reasoning set out by the Lower Appellate Court in support of the impugned order shows that the appellant was negligent, careless and was using the court process to avoid the decree passed against her. Even the proceedings initiated before this court also show the similar attitude on the part of the appellant. The application for condonation of delay remained on the file of this court almost for four

years. The appeal filed in September, 2001 came to be registered for the first time after the order dated 28/1/2005 was passed.

7. Under the circumstances, there is no case made out to entertain this appeal and it must, therefore, fail at the admission stage itself. The appeal is dismissed in limine.

(B.H. Marlapalle,J.)